1992 No. 20

SOCIAL SECURITY

The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992

Made	*20th January 1992*
Coming into operation . .	*6th April 1992*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 35(1), (2)(*b*), (2A), (4A) and (6) and 85(1)(*b*) of the Social Security (Northern Ireland) Act 1975(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 and shall come into operation on 6th April 1992.

(2) In these regulations—

"the Act" means the Social Security (Northern Ireland) Act 1975;

"the Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**b**);

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991(**c**);

"terminally ill" has the same meaning as in section 35(2C) of the Act(**d**).

(3) Unless the context otherwise requires, any reference in these regulations to—

(**a**) 1975 c. 15; section 35(1) was amended by Article 3(1) of the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) and Article 4(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17)). Section 35(2) was amended by Article 3(2) of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), paragraph 5(2) of Schedule 8 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and Schedule 4 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Section 35(2A) was inserted by Article 3(3) of the Social Security (Northern Ireland) Order 1979. Section 35(4A) was inserted by paragraph 8 of Part II of Schedule 1 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and amended by paragraph 5(4) of Schedule 8 to the Social Security (Northern Ireland) Order 1989 and paragraph 2(3) of Schedule 2 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Section 35(6) was amended by Schedule 4 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**b**) S.I. 1972/1265 (N.I. 14)

(**c**) S.I. 1991/194 (N.I. 1)

(**d**) Section 35(2C) was inserted by Article 3(1) of the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15))

(*a*) a numbered section is a reference to the section of the Act bearing that number;

(*b*) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph of that regulation bearing that number.

Conditions as to residence and presence in Northern Ireland

2.—(1) Subject to paragraphs (2) and (3), the prescribed conditions for the purposes of section 35(1) as to residence and presence in Northern Ireland in relation to any person on any day shall be that—

(*a*) on that day—

(i) he is ordinarily resident in Northern Ireland,

(ii) he is present in Northern Ireland, and

(iii) he has been present in Northern Ireland for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day; and

(*b*) where that day falls within a period in which that person—

(i) receives tax free emoluments, or

(ii) is the spouse of a person who receives tax free emoluments,

that period is immediately preceded by a period of 4 years during which the person first mentioned in this sub-paragraph was present in Northern Ireland for a period of, or for periods amounting in the aggregate to, not less than 156 weeks;

and for the purpose of this provision "tax free emoluments" means emoluments which are exempt from tax under any of the provisions listed in regulation 11(1) of the Child Benefit (General) Regulations (Northern Ireland) 1979(**a**).

(2) For the purposes of paragraph (1)(*a*)(ii) and (iii), notwithstanding that on any day a person is absent from Northern Ireland, he shall be treated as though he were present in Northern Ireland if his absence is by reason only of the fact that on that day—

(*a*) he is abroad in his capacity as—

(i) a serving member of the forces within the meaning of the definition of "serving member of the forces" in regulation 1(2) of the Social Security (Contributions) Regulations 1979(**b**),

(ii) an airman or mariner within the meaning of regulation 80 and regulation 84 respectively of the Social Security (Contributions) Regulations (Northern Ireland) 1979(**c**),

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(**a**) S.R. 1979 No. 5; to which there are amendments not relevant to these regulations
(**b**) S.I. 1979/591; to which there are amendments not relevant to these regulations
(**c**) S.R. 1979 No. 186; to which there are amendments not relevant to these regulations

(*b*) he is in employment prescribed for the purposes of section 132 of the Social Security Act 1975(**a**) in connection with continental shelf operations;

(*c*) he is living with a person mentioned in sub-paragraph (*a*)(i) and is the spouse, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person;

(*d*) his absence from Northern Ireland is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or

(*e*) his absence from Northern Ireland is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Northern Ireland, and the Department has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this sub-paragraph, he should be treated as though he were present in Northern Ireland.

(3) Where a person is terminally ill and makes a claim for attendance allowance expressly on the ground that he is such a person, paragraph (1) shall apply to him as if sub-paragraph (*a*)(iii) were omitted.

Extension of qualifying period

3. The period prescribed for the purposes of section 35(2)(*b*) (claimant to satisfy one or both of the conditions in section 35(1) for 6 months immediately preceding the date from which attendance allowance is to be awarded) shall be 2 years.

Entitlement before the date of claim in renewal cases

4. Where—

(*a*) a person has been entitled to an attendance allowance;

(*b*) the period for which that allowance has been paid has ended; and

(*c*) a claim for an attendance allowance has been made or treated as made within 6 months from the end of the period referred to in paragraph (*b*),

that person may be entitled to an attendance allowance for a period before the date of claim if he has satisfied the condition mentioned in paragraph (*a*) of section 35(1) or the condition mentioned in paragraph (*b*) of that subsection or both of those conditions, from the date on which the period referred to in paragraph (*b*) has ended until the date of claim.

Renal dialysis

5.—(1) Subject to paragraph (3), a person who suffers from renal failure and who is undergoing the treatment specified in paragraph (2) shall be deemed to satisfy the conditions—

(a) 1975 c. 14; section 132(2) was amended by paragraph 21 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23)

(*a*) in paragraph (*a*) of section 35(1) (severe physical or mental disability) if he undergoes renal dialysis by day;

(*b*) in paragraph (*b*) of section 35(1) if he undergoes renal dialysis by night;

(*c*) in either paragraph (*a*) or paragraph (*b*) of section 35(1), but not both, if he undergoes renal dialysis by day and by night.

(2) The treatment referred to in paragraph (1) is the undergoing of renal dialysis—

(*a*) 2 or more times a week; and

(*b*) which either—

(i) is of a type which normally requires the attendance of or supervision by another person during the period of dialysis, or

(ii) which, because of the particular circumstances of his case, in fact requires another person, during the period of dialysis, to attend in connection with the bodily functions of the person undergoing renal dialysis or to supervise that person in order that he avoids substantial danger to himself.

(3) Except as provided in paragraph (4), paragraph (1) does not apply to a person undergoing the treatment specified in paragraph (2) where that treatment—

(*a*) is provided under the Order;

(*b*) is provided in a hospital or similar institution;

(*c*) is out-patient treatment; and

(*d*) takes place with the assistance or supervision of any member of staff of the hospital or similar institution.

(4) Paragraph (3) does not apply for the purposes of determining whether a person is to be taken to satisfy either of the conditions specified in paragraph (1) during the period of 6 months referred to in section 35(2)(*b*) (qualifying period for attendance allowance).

Hospitalisation

6.—(1) Subject to regulation 8, it shall be a condition for the receipt of an attendance allowance for any period in respect of any person that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient—

(*a*) in a hospital or similar institution maintained or administered under the Order;

(*b*) in a hospital or similar institution in pursuance of arrangements made, or having effect as if made, by a Health and Social Services Board established under Article 16 of the Order, the Secretary of State or the Defence Council;

(*c*) in a hospital or similar institution maintained or administered by the Defence Council or a Health and Social Services trust; or

(*d*) in a hospital or similar institution in pursuance of arrangements made by a member of a recognised fund-holding practice.